

**DISMISS and Opinion Filed November 19, 2014.**



**In The  
Court of Appeals  
Fifth District of Texas at Dallas**

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**No. 05-14-00402-CV**

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**LOWELL MERRITT, Appellant**

**V.**

**ROBERT DAVIS, Appellee**

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**On Appeal from the 380th Judicial District Court  
Collin County, Texas  
Trial Court Cause No. 380-1387-2009**

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**MEMORANDUM OPINION**

Before Justices Bridges, Lang-Miers, and Myers  
Opinion by Justice Myers

Before the Court is Robert Davis's motion to dismiss the appeal. Davis contends the appeal, from an order denying appellant's motion to recuse the trial judge, should be dismissed for want of jurisdiction. Davis also filed a motion to strike Lowell Merritt's brief. Merritt filed a reply to the motion to strike. He also filed an "Add To Appellant's Reply" in which he addressed whether there is an appealable order.

Merritt has been declared a vexatious litigant and is subject to the pre-filing order under section 11.101 of the Texas Civil Practice and Remedies Code. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 11.101 (West Supp. 2014). In the trial court, Davis filed a motion to hold Merritt in contempt of court after receiving a letter from Merritt threatening him with a lawsuit. Before the hearing on the motion, Merritt filed a motion to recuse the trial judge. Following the hearing,

the trial court denied the motion to recuse and awarded sanctions after finding the motion to recuse was groundless.

Nothing in the record before this Court shows that Merritt obtained the required permission to appeal. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 11.103(a) (West Supp. 2014). Moreover, an order denying a motion to recuse may be reviewed only on appeal from a final judgment. *See* TEX. R. CIV. P. 18a(j)(1)(a). The order Merritt is appealing is an unappealable interlocutory order. For this reason, we grant Davis's motion. We dismiss the appeal for want of jurisdiction. *See* TEX. R. APP. P. 42.3(a).

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/Lana Myers/  
LANA MYERS  
JUSTICE



**Court of Appeals  
Fifth District of Texas at Dallas**

**JUDGMENT**

LOWELL MERRITT, Appellant

No. 05-14-00402-CV      V.

ROBERT DAVIS, Appellee

On Appeal from the 380th Judicial District  
Court, Collin County, Texas  
Trial Court Cause No. 380-1387-2009 CV.  
Opinion delivered by Justice Myers.  
Justices Bridges and Lang-Miers,  
participating.

In accordance with this Court's opinion of this date, the appeal is **DISMISSED**.

It is **ORDERED** that appellee ROBERT DAVIS recover his costs of this appeal from appellant LOWELL MERRITT.

Judgment entered this 19th day of November, 2014.